IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 29TH OCTOBER 2007 / 7TH KARTHIKA 1929

Bail Appl..No. 6524 of 2007

(CR. NO. 45/2003 OF KATTAKKADA EXCISE RANGE)

PETITIONER/2ND ACCUSED

SHYLAJA, D/O. DEVAKI,
VARUVILAKATHU VEEDU, KOMBOTTY, MALAYINKEEZHU.

BY ADV. SRI.T.A.UNNIKRISHNAN
SRI.K.SATHEESH KUMAR

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REP. BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 29/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No.6524 of 2007

Dated this the 29th day of October 2007

O R D E R

Application for anticipatory bail. The petitioner is the second accused. She faces allegations under the Kerala Abkari Act. She is a widow. The first accused is her brother. The first accused has subsequent to the incident, committed suicide. One litre of spirit and 750 ml of arrack were allegedly seized from the possession of the first accused. First accused is alleged to have given a confession statement to the excise officials that the contraband articles have come into his possession from the petitioner, his sister. Accordingly, the petitioner was also arrayed as an accused. The alleged incident took place on 19/08/2003. The petitioner has not been arrayed so far.

2. The learned counsel for the petitioner submits that the petitioner is innocent. Even the investigating officers were satisfied about the petitioner's innocence. She has no criminal antecedents. The petitioner was not arrested by the officials so far. No semblance of material has been obtained in the course of

investigation to suggest the complicity of the petitioner. The only material is the confession statement of the co-accused who is not available for trial admittedly. In these circumstances, the petitioner may be granted anticipatory bail. She, a woman, may not be subjected to undeserved trauma of arrest and incarceration, submits the learned counsel for the petitioner.

3. The learned Public Prosecutor, after taking instructions, fairly submits that except the statement of the deceased co-accused, no material is seem to be collected so far against the petitioner. The learned Public Prosecutor does not oppose the prayer for anticipatory bail and I am satisfied in the facts and circumstances of this case that the petitioner can be granted anticipatory bail subject of course to appropriate terms and conditions:

4. In the result, this petition is allowed. Following directions are issued under Section 438 Cr.P.C in favour of the petitioner.

i) Petitioner shall surrender before the learned Magistrate having jurisdiction at 11 a.m on 05/11/2007. He shall be released on regular bail on condition that he executes a

bond for Rs.25,000/-(Rupees twenty five thousand only) with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

ii) The petitioner shall make himself available for interrogation before the investigating officer between 10 a.m and 3 p.m on 06/11/2007 and thereafter as and when directed by the investigating officer in writing to do so.

(iii) If the petitioner does not appear before the learned Magistrate as directed in clause (i), directions issued above shall thereafter stand revoked and the police shall be at liberty to arrest the petitioner and deal with her in accordance with law, as if these directions were not issued at all.

(iv) If she were arrested prior to 05/11/2007, she shall be released from custody on her executing a bond for Rs.25,000/- (Rupees twenty five thousand only) without any sureties, undertaking to appear before the learned Magistrate on 05/11/2007.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007